

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

**CHICKASAW TELEPHONE CO.  
OCN# 1980**

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File No. EB-01-IH-0017d  
NAL/Acct. No. 200132080035  
FRN 0003-7326-09

**FORFEITURE ORDER**

**Adopted:** June 7, 2002

**Released:** June 11, 2002

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Order, we issue a monetary forfeiture against Chickasaw Telephone Co. ("Chickasaw") for willful violation of 47 C.F.R. § 52.15(f). The noted violation involves Chickasaw's failure to report its number utilization and forecast data. Based upon our review of the facts and circumstances of this case, including Chickasaw's response to our *Notice of Apparent Liability* ("NAL"),<sup>1</sup> we conclude that Chickasaw has justified a reduction of the proposed forfeiture and that it is liable for a forfeiture in the amount of \$4,800.

**II. BACKGROUND**

2. On April 24, 2001, the Chief, Enforcement Bureau, acting pursuant to delegated authority, issued the *NAL* to Chickasaw, proposing a \$6,000 forfeiture. We issued the *NAL* because it appeared that Chickasaw had failed to report on its actual and forecast number usage by filing the FCC Form 502, the North American Numbering Plan Numbering Resource Utilization/Forecast ("NRUF") Report due on September 15, 2000.<sup>2</sup> The *NAL* referenced a letter of inquiry that we sent to Chickasaw January 29, 2001 concerning its apparent failure to file the September 15, 2000 NRUF report. Our *NAL* also indicated that carriers are required to report for each separate legal entity represented by an Operating Company Number ("OCN"), and referenced one OCN for which Chickasaw had failed to file an NRUF report.<sup>3</sup> We therefore determined that Chickasaw had apparently violated section 52.15(f) of the Commission's rules,

<sup>1</sup> See *Chickasaw Telephone Company*, 16 FCC Rcd 8600 (EB 2001).

<sup>2</sup> The NRUF reports are due on or before February 1 and on or before August 1 of each year. See 47 C.F.R. § 52.15(f)(6). However, we note that the deadline for filing reports due August 1, 2000 was extended to September 15, 2000. *Numbering Resource Optimization*, CC Docket No. 99-200, 15 FCC Rcd 17005 (2000).

<sup>3</sup> See 47 C.F.R. § 52.15(f)(3)(ii).

which requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator (“NANPA”), a Pooling Administrator, or another telecommunications carrier, to report semiannually on their actual and forecast number usage.<sup>4</sup>

3. Chickasaw responded to the *NAL*, and requests cancellation or reduction of the forfeiture. Chickasaw claims that its failure to file the NRUF report was inadvertent and not willful. In this regard, Chickasaw argues that it did not receive effective notice of its risk of liability for failure to comply with the NRUF reporting requirements and that it has no prior history of violating the Commission’s rules or reporting requirements. Chickasaw also states that it has taken steps to ensure its future compliance with section 52.15(f) and that this and other mitigating circumstances justify cancellation or substantial reduction of the proposed forfeiture.

### III. DISCUSSION

4. The *NAL* explicitly states that the proposed forfeiture was assessed in accordance with applicable statutory provisions, the Commission’s rules and the Commission’s *Forfeiture Guidelines*.<sup>5</sup> Section 503(b) of the Act requires that, in examining Chickasaw’s response, we take into account the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Although Chickasaw has not justified cancellation of the forfeiture, we find that a reduction of the forfeiture amount is warranted.

5. Chickasaw argues that the \$6,000 forfeiture amount is based upon an erroneous finding that it deliberately ignored the letter of inquiry. Chickasaw claims that this is not the case, and that the Bureau’s timing and service of the letter of inquiry did not give it sufficient notice so that it could comply with the reporting requirements. In this regard, Chickasaw claims that because the letter of inquiry was not issued until January 29, 2001, was not sent to its main office and was not served on its registered agent, it did not have sufficient notice or time to file the NRUF report due February 1, 2001, aggravating its noncompliance and resulting in an upward adjustment of the base forfeiture amount of \$3,000 specified by the *Forfeiture Guidelines*.

6. Under Section 503(b)(2)(D) of the Act and the *Forfeiture Guidelines*, the Bureau has broad flexibility to determine the appropriate forfeiture.<sup>7</sup> Our *NAL* noted that Chickasaw had not responded to our letter of inquiry, but proposed a forfeiture based upon Chickasaw’s failure to file the NRUF report due on September 15, 2000. Although we reminded Chickasaw that the next NRUF report was due on February 1, 2001, the letter of inquiry was directed to the NRUF report due September 15,

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<sup>4</sup> *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 15 FCC Rcd 7574 (2000)(“*NRO Order*”); *recon. and clarification in part*, Second Report and Order, Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, 16 FCC Rcd 306 (2000)(“*NRO Recon. Order*”).

<sup>5</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999)(“*Forfeiture Guidelines*”)(codified at 47 C.F.R. § 1.80(b)(4) Note).

<sup>6</sup> 47 C.F.R. § 503(b)(2)(D).

<sup>7</sup> *Id.* See *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997). See, e.g., *SBC Communications Inc.*, 16 FCC Rcd 12306 (2001).

2000, and requested proof of the filing of that report. In addition, our *NAL* warned Chickasaw that its failure to file the February 1, 2001 NRUF report or to comply with section 52.15(f) reporting requirements in the future could form the basis for *additional* notices of apparent liability, but did not propose a sanction for its failure to file the February 1, 2001 NRUF report.<sup>8</sup>

7. Our *NAL* also emphasized the critical importance of consistent and accurate reporting of number utilization and forecast data.<sup>9</sup> The *NAL* explained that we imposed an upward adjustment based upon the potential harm to the Commission's numbering administration and optimization caused by non-compliance with section 52.15(f). The amount of the upward adjustment took into account Chickasaw's inventory of numbering resources.<sup>10</sup> In this regard, the upward adjustment creates an incentive for carriers to report on their number utilization and forecast data in addition to recognizing the potential harm to numbering administration and optimization when carriers do not comply with section 52.15(f).<sup>11</sup> Thus, we also disagree with Chickasaw's assertion that the forfeiture proposed is unjustifiably punitive.

8. Furthermore, Chickasaw does not contest our conclusion that it failed to file the September 15, 2000 NRUF report, but argues that its failure to comply with the mandatory reporting requirements of section 52.15(f) was not willful. However, the term "willful," as used in section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.<sup>12</sup> Carriers are required to know and comply with the Commission's rules, and Chickasaw's assertion that the timing of our letter of inquiry did not give it adequate notice of the NRUF reporting requirements is unavailing.<sup>13</sup> Moreover, we would not have been precluded from issuing the *NAL* based on Chickasaw's apparent failure to file the September 15, 2000 NRUF report even if no inquiry letter had been sent. Thus, we reject Chickasaw's argument that that "the timing and delivery of the Bureau's [letter of inquiry] serve to mitigate Chickasaw's culpability."

9. Chickasaw also presents other factors in support of its argument that a cancellation or reduction of the forfeiture amount is justified. In this regard, Chickasaw asserts that it is a small rural telephone company with limited resources and that it would be "significantly impacted" by the \$6,000 penalty proposed. As set forth in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless adequate documentation is submitted: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted account practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must be specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>14</sup>

<sup>8</sup> *Chickasaw Telephone Co.*, 16 FCC Rcd at 8602.

<sup>9</sup> *Id.*

<sup>10</sup> *Chickasaw Telephone Co.*, 16 FCC Rcd at 8602.

<sup>11</sup> See 47 C.F.R. § 1.80(b)(4) Note.

<sup>12</sup> See, e.g., *Valley Page*, 12 FCC Rcd 3087, 3088-89 (WTB 1997).

<sup>13</sup> See, e.g., *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Moreover, we note that our letter of inquiry was sent to Chickasaw's main office in Sulphur, Oklahoma.

<sup>14</sup> *Chickasaw Telephone Co.*, 16 FCC Rcd at 8603, ¶ 13.

Chickasaw has not provided the necessary proof to evaluate its claim of inability to pay.

10. Moreover, Chickasaw's implementation of procedures to assure the timeliness of future NRUF filings does not justify reduction or cancellation of the proposed forfeiture penalty.<sup>15</sup> However, we have verified Chickasaw's claim that it has an overall history of compliance with the Commission's rules which warrants reduction of the forfeiture amount.<sup>16</sup> We have reviewed Chickasaw's response in light of the statutory factors set forth above, and conclude that Chickasaw has not justified cancellation of the proposed forfeiture but that its overall record justifies a reduction of the forfeiture from \$6,000 to \$4,800.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 0.111, 0.311 and 1.80, that Chickasaw Telephone Co. FORFEIT to the United States the sum of four thousand eight hundred dollars (\$4,800) for willfully violating the Commission's rules that require U.S. carriers to report actual and forecast number usage.

12. Payment of the forfeiture may be made by mailing a check or money order, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, within 30 days of the release of this Forfeiture Order.<sup>17</sup> The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and should note the NAL/Acct. No. referenced above. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>18</sup>

13. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail/Return Receipt Requested, to Larry D. Jones, Corporate Treasurer, Chickasaw Telephone Co., 124 W. Vinita, P.O. Box 460, Sulphur, Oklahoma 73086-0460, and to its counsel, Harold

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<sup>15</sup> See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973). See also *Coleman Enterprises, Inc.*, 16 FCC Rcd 10,016, 10,020-21 (2001), citing *Long Distance Services, Inc.*, 13 FCC Rcd 4444 (CCB 1998)(all common carriers are required to comply with the Commission's rules, regardless of size or resources, and remedial efforts do not alter the fact that violations had taken place or justify mitigation).

<sup>16</sup> See, e.g., *Page-Comm*, 16 FCC Rcd 6842 (EB 2001).

<sup>17</sup> See 47 C.F.R. § 1.80(h).

<sup>18</sup> See 47 C.F.R. § 1.1914.

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FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
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